



27 OCT 2006

Salvatore J. Abbruzzese  
Hoffman & Baron, LLP  
6900 Jericho Turnpike  
Syosset, NY 11791-4407

|                                     |   |                      |
|-------------------------------------|---|----------------------|
| In re Application of                | : |                      |
| KROESE, et al.                      | : |                      |
| U.S. Application No.: 10/522,117    | : | DECISION ON PETITION |
| PCT No.: PCT/NL03/00528             | : |                      |
| Int. Filing Date: 17 July 2003      | : | 37 CFR 1.181         |
| Priority Date: 26 July 2002         | : |                      |
| Attorney Docket No.:903-129 PCT/US  | : |                      |
| For: SWITCHING UNIT FOR SWITCHING A | : |                      |
| CONNECTION BETWEEN A MAINS AND      | : |                      |
| A LOAD                              | : |                      |

This decision is in response to applicant's "PETITION TO REVIVE PURSUANT TO 37 C.F.R. §1.137(b)" filed 18 August 2006 in the United States Patent and Trademark Office (USPTO). For the reasons discussed herein the petition is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. No petition fee is required.

### **BACKGROUND**

On 17 July 2003, applicant filed international application PCT/NL03/00528 which claimed priority of an earlier application filed 26 July 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 05 February 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 26 January 2005.

On 24 January 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application and a first preliminary amendment.

On 06 September 2005, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. Applicant was afforded two months to file the required response and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 11 July 2006, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form

PCT/DO/EO/909) informing applicant that applicant had failed to respond to the Form PCT/DO/EO/905 mailed 06 September 2005 within the time period set therein and that above-identified application was abandoned as to the United States.

On 18 August 2006, applicant filed the petition considered herein.

### **DISCUSSION**

As discussed below, when applicant claims that abandonment of the application was improper because applicant never received an Office action, a petition under 37 CFR 1.137(a) or (b) is not required. Instead, a petition under 37 CFR 1.181 is proper.

The Manual of Patent Examining Procedure (MPEP) at 711.03(c) and the Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered. (See also, *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971). Applicant has satisfied items (1) above.

As to item (2), applicant has not provided a statement that a search of the file jacket indicates that the Form PCT/DO/EO/905 mailed 06 September 2005 was not received.

Regarding items (3) and (4), applicant has not provided a statement that a review of counsel's docket records indicates the Office action was not received nor has applicant included copies of the docket record for the firm covering the time period in which the subject Office action would have been recorded.

### **CONCLUSION**

For the reasons detailed above, applicant's petition under 37 CFR 1.181 is **DISMISSED**.

This application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'D. Putonen', written in a cursive style.

Derek A. Putonen  
Attorney Advisor  
Office of PCT Legal Administration  
Tel: (571) 272-3294  
Fax: (571) 273-0459